

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1307 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1-5 No

BHARATSINH FATESINH SALUNIA

Versus

STATE OF GUJARAT

Appearance:

MR KM PATEL for Petitioner
GOVERNMENT PLEADER for Respondent No. 1
MR ARUN H MEHTA for Respondent No. 2

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 07/07/98

ORAL JUDGEMENT

Rule.

The grievance voiced by the petitioner in this Special Civil Application is that the respondent Gujarat Pollution Board has illegally withheld all service benefits such as provident fund, gratuity, leave salary etc. The say of the petitioner is that on account of health problem he decided to give up the job of Member

Secretary of the Gujarat Pollution Control Board and accordingly he submitted resignation on 29.7.1995 to the Chairman of the Board conveying his intention to leave the services with effect from 29.8.1995. The decision of the Government was conveyed not to accept the same under communication dated 25.8.1995. The petitioner again made a request under communication dated 22.9.1995 to reconsider the decision refusing to accept the resignation. Since no decision was taken he requested the Chairman of the Board to allow him to proceed on leave with effect from 22.1.1996 till his resignation is accepted and he is relieved. He was permitted to do so. Adhoc arrangement was made in his place. Ultimately his resignation was accepted on 20.10.1997 by the Government, with certain conditions. The petitioner resisted imposing of those conditions. The conditions were struck off under communication dated 20.11.1997. It is not necessary to state further facts as the controversy is only about the terminal dues of the petitioner. The relevant fact which deserves to be mentioned here is that in affidavit filed by the respondent it is stated that the petitioner was on leave with effect from 22.1.1996 and during this period he has served with M/s. Essar Steel Limited in the capacity of General Manager (Environment & Risk). The petitioner was also serving with M/s. Metrochem Industries Ltd. in the month of February and March 1997.

This court by interim order dated 24.4.1998 directed the respondent to process the claim of the terminal dues of the petitioner and release the same if the petitioner is eligible for the same. In response to which the affidavit has been filed by Mr. J.M. Barot, Member Secretary, Gujarat Pollution Control Board. Suffice it to say that there is no dispute with respect to provident fund and leave encashment. The only dispute now left out is with respect to the payment of gratuity.

It is contended by Mr. A.H. Mehta, learned counsel appearing for the Board that the petitioner is not entitled to gratuity on account of his conduct which is not expected from a person holding high office. Mr. Patel, learned counsel appearing for the petitioner, has invited my attention to the gratuity Scheme of the Board. Clause 11 deals with forfeiture of the gratuity which reads as follows:-

"(a) Gratuity shall be wholly forfeited in
case of termination of service of the member (a)
for riotous or disorderly conduct or any other
act of violence on his part or (b) for any act

which constitutes an offence involving moral turpitude provided such offence is committed by him in the course of his employment.

(b) In case of termination of service for any act, wilful omission or negligence of the member causing any damage or loss to or destruction of property belonging to the Board, gratuity payable under the scheme shall be forfeited to the extent of the damage or loss so caused."

Learned counsel appearing for the Board has failed to satisfy this court how the case of the petitioner falls in any of the category provided under Clause 11 for forfeiture of the gratuity. It is only in exceptional cases for riotous or disorderly conduct or any act which constitutes an offence involving moral turpitudes gratuity can be forfeited. Thus, in my view, the stand of the Board is arbitrary and unreasonable in withholding the gratuity. However, the period between 22.1.1996 onwards shall not be taken into consideration for computing the amount of gratuity as the petitioner had not only proceeded on leave but had taken up job with some other industries.

In view of the aforesaid, this Special Civil Application is allowed. No specific order is required to be given with respect to provident fund and leave encashment in view of the affidavit filed by the Member Secretary, Gujarat Pollution Control Board. The respondent is directed to release gratuity amount excluding the period onwards 22.1.1996, as indicated above. Rule is made absolute to the aforesaid extent. No order as to costs.

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